

CITY OF SANTA FE

ADMINISTRATIVE MANUAL

Originating Business Unit:

Human Resources

SUBJECT:



Family and Medical Leave of Absence	Policy Number 2500-5-6	# Pages 06
	Effective Date 10-09-1996	Revision Date 06-20-2005

1.0 PURPOSE:

- 1.1 To outline the conditions under which an employee may request time off in accordance with the Family and Medical Leave Act.

2.0 APPLICABLE TO:

- 2.1 All City employees who meet established eligibility criteria.

3.0 REFERENCES:

- 3.1 Family Medical Leave Act of 1993 ("FMLA")
- 3.2 U.S. Department of Labor Regulations.

4.0 DEFINITIONS:

- 4.1 **Eligible Employee:** An employee who has been employed by the City for at least 12 months in total and who has worked at least 1,250 hours during the 12-month period preceding the commencement of the leave.
- 4.2 **Equivalent position:** A position with equivalent pay, benefits and working conditions, including privileges and status. The equivalent position must involve the same or substantial similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility and authority.
- 4.3 **Health Care Provider:** A doctor of medicine or osteopathy, podiatrist, dentists, clinical psychologist, optometrists, chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist), nurse practitioners, nurse midwives authorized to practice in the State and performing within the scope of their practices as defined by State Law, Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts, and any other persons determined by the Secretary of the U.S. Department of Labor to be capable of providing health care services.

- 4.4 **Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves:
- 1) any period of incapacity or treatment that involves inpatient care (i.e. overnight stay) in a hospital, hospice, or residential medical care facility;
 - 2) continuing treatment by a health care provider that includes a period of incapacity of more than three (3) consecutive days; or
 - 3) continuing treatment by a health care provider for chronic or long-term health conditions that are incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three consecutive days.
- (See 29 CFR 825.114 for a complete definition)

Examples of “serious health conditions” include, but are not limited to: heart attacks, most cancers, back conditions requiring extensive therapy, spinal injuries, pneumonia, severe arthritis, severe nervous disorders, and clinical depression.

Examples of conditions that generally *do not qualify* as a serious health condition under FMLA include, but are not limited to: common cold, flu, routine dental problems, stress, allergies, nausea, minor ulcers, earaches, headaches other than migraines, cosmetic conditions (acne, plastic surgery).

- 4.5 **Family and /or Medical Leave of Absence:** shall be defined as an approved absence available to eligible employees for up to 12 weeks of leave per 12-month period under particular circumstances that are critical to the life of a family.

5.0 POLICY:

- 5.1 Eligible employees may take time off from work in accordance with the FMLA.
- 5.2 Leave may be taken upon the birth of the employee’s child; upon the placement of a child with the employee for adoption or foster care; when the employee is needed to care for a child, spouse, or parent who has a serious health condition; or when the employee is unable to perform the functions of his/her position because of the employee’s own serious health condition.
- 5.3 Employees who are defined by the FMLA as “key employees” may be denied restoration to the same or equivalent position in certain situations as permitted by the FMLA.

6.0 PROCEDURES:

6.1 Requesting FMLA Leave

A request for FMLA leave is initiated by completing a “Request for Family and Medical Leave of Absence” form and submitting it to the Human Resources Department. The form should be completed by the employee prior to the start of leave. If possible the form should be submitted 30 days in advance of the effective date of the leave. If the form is not completed prior to the start of the leave, the records of absence will be calculated as FMLA retroactive to the eligibility date of the leave, when the forms are received by the Human Resources Department and the leave is approved .

6.1.1 Certification of Health Care Provider

The "Request for Family and Medical Leave of Absence" form must be accompanied by a "Certification of Health Care Provider," DOL form WH-380 (FMLA), completed by the patient's health care provider.

6.2 Additional Health Care Provider Opinions

The City may ask for a second medical opinion if it doubts the validity of the employee's health care provider's opinion. The City will pay for the employee to consult a second health care provider to be selected by the City. If there is a conflict between the original certification and the second opinion, the City may require the opinion of a third health care provider. The City and the employee will jointly select the third health care provider and the City will pay for the opinion. The third opinion will be considered final.

6.3 City's Response to FMLA Request

The City will respond to the employee's "Request for Family and Medical Leave of Absence" by completing an "Employer Response to Employee Request for Family or Medical Leave", DOL form WH-381 (FMLA).

6.4 Calculation of Leave

The eligibility year used by the City is the 12 month period measured forward from the date the employee first begins his or her FMLA leave. In other words, calculating and counting the relevant 12-month cycle begins the first time the employee commences FMLA leave. This cycle would be repeated as leave is needed in subsequent years. For example, if an eligible employee needed a 12-week period of leave that commenced on April 1st of a given year; his or her "12 month period" would run from April 1st through March 31st of the following year. In future years, the 12-month period would begin to run again when the employee needed leave. This method of calculation will not go into effect until 60 days after the effective date of this policy revision. During the transition period from the calendar year method to the rolling 12-month period measure forward, the employee may select the method which affords the greatest benefit to the employee. For the birth or adoption of a child, the eligibility year expires 12 months from the birth or placement of the child.

Absences from work longer than three days will be designated as FMLA leave and calculated against the 12 weeks if the City receives sufficient information from the employee or the employee's spokesperson that the absence is FMLA-qualifying.

6.5 Intermittent Leave and Reduced Work Schedule

If medically necessary for a serious health condition of the eligible employee or his or her spouse, child or parent, leave may be taken on an intermittent or reduced leave schedule. When intermittent leave is requested, the employee must make efforts to schedule leave so as not to disrupt city operations. Requests for intermittent leave or reduced work

schedules must be approved by the employee's department director and the Human Resources Department. If leave is requested on an intermittent basis, the City may require the employee to transfer temporarily to an alternative position which better accommodates recurring periods of absence or a part-time schedule, provided that the position is an equivalent position.

6.6 Spouses Employed by City

Spouses who are both employed by the City are entitled to a combined total of 12 weeks of leave (rather than 12 weeks each) for the birth or adoption of a child or for the care of a sick parent.

6.7 Utilization of Paid Leave

Employees on an approved FMLA leave of absence must first use any paid time off (sick leave, annual leave, compensatory time and personal leave) which they have available before taking leave without pay.

6.8 Notification and Reporting Requirements:

When the need for leave is foreseeable, such as the birth or adoption of a child, the employee must provide a minimum of 30 days notice. If the need to use leave is foreseeable and based on preplanned and prescheduled medical treatment, then the employee is responsible for scheduling the treatment in a manner that does not disrupt the City's operations. This provision is subject to approval of the health care provider. When the need for leave is not foreseeable, the employee should give notice to his/her immediate supervisor and to the Personnel Office as soon as possible under the facts and circumstances of the particular case.

6.9 Status of Employee Benefits

Any employee whose "Request for Family and Medical Leave of Absence" is approved will retain his/her health care insurance benefits. The City will continue to pay the employer's share of health care insurance premiums, and the employee will continue to pay his/her share.

6.9.1 If the employee is on paid leave, his/her share of health care insurance premiums will be paid by payroll deduction.

6.9.2 If the employee is on unpaid leave, the employee is required to notify the Human Resources Department to make arrangements for payment of the employee's share of his/her share of health care insurance premiums. Failure of the employee to pay his or her share of the health premium will result in the loss of coverage.

6.9.2.1 If the employee is on unpaid leave and informs the City that he/she does not intend to return to work at the end of the approved leave period, the City's obligation to provide health care insurance ceases at the end of the unpaid leave period.

- 6.9.2.2 If the employee does not return to work for reason other than a continued serious health condition, the employee may required to reimburse the City for the employer's share of health care insurance premiums paid during the period of unpaid leave.

6.9.3 **Restoration to Employment**

Upon return from FMLA leave, an employee will be restored to his or her previous position or to an equivalent position to the extent required by the FMLA.

6.9.4 **Failure to Return From Leave**

The failure of an employee to return to work upon the expiration of FMLA leave may subject the employee to discipline up to and including dismissal.

6.9.5 **Interpretation of Policy**

This policy shall be interpreted in harmony with the FMLA. It is not the intent of this policy to provide benefits less than or greater than required by the FMLA.


6.10 **Effect on Labor Agreements**

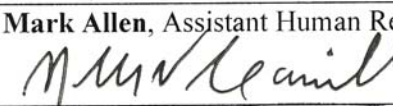
All provisions of this policy shall prevail except as expressly modified by any applicable labor agreement.

7.0 APPENDICES:

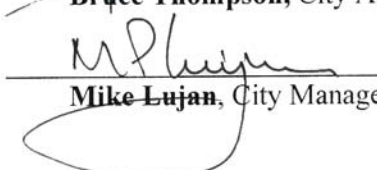
- 7.1 "Request for Family and Medical Leave of Absence" form
7.2 "Certification of Health Care Provider", DOL form WH-380-(FMLA)
7.3 "Employer Response to Employee Request for Family or Medical Leave", DOL form WH-381 (FMLA)

8.0 REVIEW AND APPROVALS:

8.1 PREPARED BY:  6-20-05
Mark Allen, Assistant Human Resources Dir. DATE

8.2 REVIEWED BY:  DATE
Mike Carrillo, Human Resources Director DATE

8.3 REVIEWED BY:  6/24/05
Bruce Thompson, City Attorney DATE

8.4 APPROVED BY:  6-28-05
Mike Lujan, City Manager DATE